



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

**GROVER SELLERS**  
ATTORNEY GENERAL

Mrs. Catherine Lyne Barnhill  
County Attorney  
Bee County  
Beeville, Texas

Dear Mrs. Barnhill:

Opinion No. 0-6027  
Re: Penalty for a viola-  
tion of Article 666-4  
(a) Vernon's Annotated  
Penal Code

This will acknowledge receipt of your letter dated  
May 15, 1944, which reads, in part, as follows:

"I should like to request a ruling on whether  
violation of Article 666-4-(a) of the Penal Code  
carries a penalty as provided for in Article 666-4-  
(a) (3) of a fine not exceeding \$50.00, or whether  
the penalty for violation of Article 666-4-(a) is  
covered by Article 666-41, providing for a \$100.00  
minimum fine for any person who violates any pro-  
vision of this Act for which a specific penalty is  
not provided."

Article 666-4, Vernon's Annotated Penal Code, pro-  
vides as follows:

"(a). It shall be unlawful for any person to  
manufacture, distill, brew, sell, possess for the  
purpose of sale, import into this state, export from  
the state, transport, distribute, warehouse, store,  
solicit orders for, take orders for, or for the pur-  
pose of sale to bottle, rectify, blend, treat, for-  
tify, mix, or process any liquor in any wet area  
without first having procured a permit of the class  
required for such privilege. As amended Acts 1943,  
48th Leg., p. 509, ch. 325, § 2.

"(c) (1) It shall be unlawful for any person to consume any alcoholic beverage in any public place, or for any person to possess any alcoholic beverage in any public place for the purpose of consuming the same in such public place, at any time on Sunday between the hours of 1:15 a.m. and 1:00 o'clock p.m., and on all other days at any time between the hours of 12:15 a.m. and 7:00 o'clock a. m.

"(2) Any alcoholic beverage possessed in violation of this Section is declared to be an illicit beverage and may be seized without warrant to be used as evidence of a violation of law, and any person in possession thereof or who otherwise violates any provision of this Section may be arrested without warrant.

(3) Any person who violates any provision of this section shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding Fifty Dollars (\$50). Added Acts 1943, 48th Leg., p. 339, ch. 221, § 1.

"(d) Proof that an alcoholic beverage is possessed in violation of preceding Section 4 (c) shall require evidence that the defendant has, on the date of the offense charged, consumed an alcoholic beverage in violation of said Section. Added Acts 1943, 48th Leg., p. 339, ch. 221, § 1."

To clarify any seeming ambiguity, we refer to House Bill 8, Chapter 221, Acts 48th Legislature, which provides, in part, as follows:

"Section 1. That Article 1, Chapter 467, Acts of the Second Called Session of the Forty-fourth Legislature, as amended by House Bill No. 8, Acts of the Third Called Session of the Forty-fourth Legislature, By House Bills Nos. 432 and 5, Acts of the Regular Session of the Forty-fifth Legislature by Senate Bill No. 20, Acts of the First Called Session of the Forty-fifth Legislature, and by House Bills Nos. 8 and 373, Acts of the Regular Session of the Forty-seventh Legislature, be amended by the addition of new Sections 4 (c) and 4 (d), to read as follows:

"Section 4 (c).

"(1) It shall be unlawful for any person to consume any alcoholic beverage in any public place, or for any person to possess any alcoholic beverage in any public place for the purpose of consuming the same in such public place, at any time on Sunday between the hours of 1:15 a.m. and 1:00 o'clock p.m., and on all other days at any time between the hours of 12:15 a.m. and 7:00 o'clock a.m.

"(2) Any alcoholic beverage possessed in violation of this Section is declared to be an illicit beverage and may be seized without warrant to be used as evidence of a violation of law, and any person in possession thereof or who otherwise violates any provision of this Section may be arrested without warrant.

"(3) Any person who violates any provision of this Section shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding Fifty Dollars (\$50)." Emphasis ours.

It is our opinion that the Legislature intended Section 4 (c) (3), supra, as the penalty provision for a violation of Section 4 (c), supra, and that alone.

It follows that we believe a violation of Article 666-4(a), supra, is punishable by Article 666-41, Vernon's Annotated Penal Code, which provides as follows:

"Any person who violates any provision of this Act for which a specific penalty is not provided shall be deemed guilty of a misdemeanor and upon conviction be punished by fine of not less than One Hundred (\$100.00) Dollars and not more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

"The term "specific penalty" as used in this Section means and refers only to a penalty which might be imposed as a result of a criminal prosecution. As amended Acts 1943, 48th Leg., p. 509, ch. 325, § 8."

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I am **Trusting this satisfactorily answers your inquiry,**

Yours very truly

**ATTORNEY GENERAL OF TEXAS**

**BY (s) Fred C. Chandler  
Assistant**

**By (s) Elton M. Hyder, Jr**

**KMH:rt  
KMH:fo**

**APPROVED MAY 27, 1944**

**(s) Geo. P. Blackburn**

**(acting) ATTORNEY GENERAL  
OF TEXAS**

**APPROVED OPINION COMMITTEE  
BY (s) OS. CHAIRMAN**